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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,307	12/04/2003	Lapchuk Anatoliy	4611-031	9594

22440 7590 07/24/2007  
GOTTLIEB RACKMAN & REISMAN PC  
270 MADISON AVENUE  
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NEW YORK, NY 10016-0601

EXAMINER
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CHOW, LIXI

ART UNIT	PAPER NUMBER
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2627

MAIL DATE	DELIVERY MODE
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07/24/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,307	<b>Applicant(s)</b> ANATOLIY ET AL.	
	<b>Examiner</b> Lixi Chow	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8, 10 and 21-26 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 1-4 and 22-25 is/are allowed.  
 6) ☒ Claim(s) 8, 10, 21 and 26 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                       |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### DETAILED ACTION

1. Claims 8, 10 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kiguchi et al. (USP 2003/0015651; hereafter Kiguchi) as set forth in the last Office Action.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiguchi et al. (USP 2003/0015651; hereafter Kiguchi) in view of Moreland et al. (US 2003/0155934; hereafter Moreland).

Kiguchi discloses plurality type of probes (see probes shown in Figs. 4, 5, 7 and 8) can be used in the optical recording apparatus of Fig. 2. However, Kiguchi fails to disclose the near filed probe having a conical shape with metal layers disposed on the sides of the conical shape. On the other hand, Moreland discloses an optical fiber probe having a conical shape with metal layers disposed on the sides of the conical shape (see Figs. 7B and 10A).

Since Kiguchi discloses plurality types of probes can be used in the optical recording apparatus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ a probe having a conical shape with metal layers disposed on the sides as suggested by Moreland. One of ordinary skill in the art would have been motivated to do this, because the design of Moreland's probe permits confinement of the probing field within

the desired location (see paragraph [0014]). Thus, such probe would enhance the performance of the optical recording apparatus.

***Allowable Subject Matter***

4. Claims 1-4 and 22-25 are allowed.

Claims 1 and 22 include subject matter that was indicated to be allowable in the last Office Action; hence, claims 1-4 and 22-25 are allowed.

***Response to Arguments***

5. Applicant's arguments filed 05/11/07 have been fully considered but they are not persuasive. Applicant argues Kiguchi does not disclose "a plurality of metal layers coated on opposite sides thereof and symmetrically spaced-apart from each other to generate an electrical potential difference". Applicant supports the argument by stating that Kiguchi does not disclose an optical fiber; it discloses a planer-type probe; and Kiguchi fails to disclose a potential difference generated by the metal layers. However, Examiner respectfully disagrees with Applicant statement. First, Kiguchi does disclose an optical fiber probe (see paragraph [0059]). Kiguchi suggests that a cone shape probe made of optical fiber can be used. Second, not only did Kiguchi discloses a planer-type probe, Kiguchi also discloses a probe in the shape of cone or pyramid can be used. Finally, Kiguchi teaches that metal layers are coated on opposite sides of the probe (see Fig. 3B). The surfaces of the metal layer are spaced apart differently at the base end of the probe as compare to the distal end of the probe (see Fig. 5). Thus, the difference in spacing of the metal plane generates an electrical potential difference. Accordingly, claims 8, 10 and 21 are not patentable over Kiguchi.

Art Unit: 2627

*Conclusion*

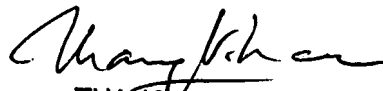
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lixi Chow whose telephone number is 571-272-7571. The examiner can normally be reached on Mon-Fri, 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
THANG V. TRAN  
PRIMARY EXAMINER

LC 7/20/07